

AMENDMENTS

1989—Pub. L. 101-12 renumbered section 1209(a) of this title as this section and inserted section catchline.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

§ 1206. Annual report

The Board shall submit an annual report to the President and the Congress on its activities, which shall include a description of significant actions taken by the Board to carry out its functions under this title. The report shall also review the significant actions of the Office of Personnel Management, including an analysis of whether the actions of the Office of Personnel Management are in accord with merit system principles and free from prohibited personnel practices.

(Added Pub. L. 95-454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1131, §1209(b); renumbered §1206 and amended Pub. L. 101-12, §3(a)(10), Apr. 10, 1989, 103 Stat. 18.)

PRIOR PROVISIONS

A prior section 1206, added Pub. L. 95-454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1125, which related to authority and responsibilities of Special Counsel, was repealed by Pub. L. 101-12, §§3(a)(8), 11, Apr. 10, 1989, 103 Stat. 18, effective 90 days following Apr. 10, 1989. See section 1212 of this title.

AMENDMENTS

1989—Pub. L. 101-12 renumbered section 1209(b) of this title as this section and inserted section catchline.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-12 effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in first sentence of this section relating to annual reports to Congress (formerly 5 U.S.C. 1209(b)), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 176 of House Document No. 103-7.

[§§ 1207, 1208. Repealed. Pub. L. 101-12, §3(a)(8), Apr. 10, 1989, 103 Stat. 18]

Section 1207, added Pub. L. 95-454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1130, provided for hearings and decisions on complaints filed by Special Counsel. See section 1215(a)(2) to (5) of this title.

Section 1208, added Pub. L. 95-454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1130, related to stays of certain personnel actions. See section 1214(b) of this title.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as an Effective Date of 1989 Amendment note under section 1201 of this title.

[§ 1209. Renumbered §§ 1205 and 1206]

CODIFICATION

Subsecs. (a) and (b) of this section were renumbered as sections 1205 and 1206, respectively, of this title by Pub. L. 101-12, §3(a)(9), (10). Pub. L. 102-378, §2(2), Oct. 2, 1992, 106 Stat. 1346, struck out section catchline of prior section 1209.

SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

§ 1211. Establishment

(a) There is established the Office of Special Counsel, which shall be headed by the Special Counsel. The Office shall have an official seal which shall be judicially noticed. The Office shall have its principal office in the District of Columbia and shall have field offices in other appropriate locations.

(b) The Special Counsel shall be appointed by the President, by and with the advice and consent of the Senate, for a term of 5 years. The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection. The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term. The Special Counsel may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President.

(Added Pub. L. 101-12, §3(a)(11), Apr. 10, 1989, 103 Stat. 19, §1211(a), and Pub. L. 95-454, title II, §202(a), Oct. 13, 1978, 92 Stat. 1122, §1204; renumbered §1211(b) and amended Pub. L. 101-12, §3(a)(6), (12), Apr. 10, 1989, 103 Stat. 17, 19; Pub. L. 103-424, §3(a), Oct. 29, 1994, 108 Stat. 4361.)

AMENDMENTS

1994—Subsec. (b). Pub. L. 101-424 inserted after first sentence "The Special Counsel may continue to serve beyond the expiration of the term until a successor is appointed and has qualified, except that the Special Counsel may not continue to serve for more than one year after the date on which the term of the Special Counsel would otherwise expire under this subsection."

1989—Subsec. (b). Pub. L. 101-12, §3(a)(6), (12), renumbered section 1204 of this title as subsec. (b) of this section, substituted "Special Counsel shall be appointed by the President" for "Special Counsel of the Merit Systems Protection Board shall be appointed by the President from attorneys", substituted "The Special Counsel shall be an attorney who, by demonstrated ability, background, training, or experience, is especially qualified to carry out the functions of the position. A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of the Special Counsel's predecessor serves for the remainder of the term." for "A Special Counsel appointed to fill a vacancy occurring before the end of a term of office of his predecessor serves for the remainder of the term.", and inserted at end "The Special Counsel may not hold another office or position in the Government of the United States, except as otherwise provided by law or at the direction of the President."

EFFECTIVE DATE

Subchapter effective 90 days following Apr. 10, 1989, see section 11 of Pub. L. 101-12, set out as a note under section 1201 of this title.

TRANSFER OF FUNDS

Section 8(c) of Pub. L. 101-12 provided that: “The personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds employed, held, used, arising from, available or to be made available to the Special Counsel of the Merit Systems Protection Board are, subject to section 1531 of title 31, United States Code, transferred to the Special Counsel referred to in section 1211 of title 5, United States Code (as added by section 3(a) of this Act), for appropriate allocation.”

§ 1212. Powers and functions of the Office of Special Counsel

(a) The Office of Special Counsel shall—

(1) in accordance with section 1214(a) and other applicable provisions of this subchapter, protect employees, former employees, and applicants for employment from prohibited personnel practices;

(2) receive and investigate allegations of prohibited personnel practices, and, where appropriate—

(A) bring petitions for stays, and petitions for corrective action, under section 1214; and

(B) file a complaint or make recommendations for disciplinary action under section 1215;

(3) receive, review, and, where appropriate, forward to the Attorney General or an agency head under section 1213, disclosures of violations of any law, rule, or regulation, or gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety;

(4) review rules and regulations issued by the Director of the Office of Personnel Management in carrying out functions under section 1103 and, where the Special Counsel finds that any such rule or regulation would, on its face or as implemented, require the commission of a prohibited personnel practice, file a written complaint with the Board; and

(5) investigate and, where appropriate, bring actions concerning allegations of violations of other laws within the jurisdiction of the Office of Special Counsel (as referred to in section 1216).

(b)(1) The Special Counsel and any employee of the Office of Special Counsel designated by the Special Counsel may administer oaths, examine witnesses, take depositions, and receive evidence.

(2) The Special Counsel may—

(A) issue subpoenas; and

(B) order the taking of depositions and order responses to written interrogatories;

in the same manner as provided under section 1204.

(3)(A) In the case of contumacy or failure to obey a subpoena issued under paragraph (2)(A), the Special Counsel may apply to the Merit Systems Protection Board to enforce the subpoena in court pursuant to section 1204(c).

(B) A subpoena under paragraph (2)(A) may, in the case of any individual outside the territorial jurisdiction of any court of the United States, be served in the manner referred to in subsection (d) of section 1204, and the United States

District Court for the District of Columbia may, with respect to any such individual, compel compliance in accordance with such subsection.

(4) Witnesses (whether appearing voluntarily or under subpoena) shall be paid the same fee and mileage allowances which are paid subpoenaed witnesses in the courts of the United States.

(c)(1) Except as provided in paragraph (2), the Special Counsel may as a matter of right intervene or otherwise participate in any proceeding before the Merit Systems Protection Board, except that the Special Counsel shall comply with the rules of the Board.

(2) The Special Counsel may not intervene in an action brought by an individual under section 1221, or in an appeal brought by an individual under section 7701, without the consent of such individual.

(d)(1) The Special Counsel may appoint the legal, administrative, and support personnel necessary to perform the functions of the Special Counsel.

(2) Any appointment made under this subsection shall be made in accordance with the provisions of this title, except that such appointment shall not be subject to the approval or supervision of the Office of Personnel Management or the Executive Office of the President (other than approval required under section 3324 or subchapter VIII of chapter 33).

(e) The Special Counsel may prescribe such regulations as may be necessary to perform the functions of the Special Counsel. Such regulations shall be published in the Federal Register.

(f) The Special Counsel may not issue any advisory opinion concerning any law, rule, or regulation (other than an advisory opinion concerning chapter 15 or subchapter III of chapter 73).

(g)(1) The Special Counsel may not respond to any inquiry or disclose any information from or about any person making an allegation under section 1214(a), except in accordance with the provisions of section 552a of title 5, United States Code, or as required by any other applicable Federal law.

(2) Notwithstanding the exception under paragraph (1), the Special Counsel may not respond to any inquiry concerning an evaluation of the work performance, ability, aptitude, general qualifications, character, loyalty, or suitability for any personnel action of any person described in paragraph (1)—

(A) unless the consent of the individual as to whom the information pertains is obtained in advance; or

(B) except upon request of an agency which requires such information in order to make a determination concerning an individual's having access to the information unauthorized disclosure of which could be expected to cause exceptionally grave damage to the national security.

(Added Pub. L. 101-12, §3(a)(13), Apr. 10, 1989, 103 Stat. 19; amended Pub. L. 103-424, §3(b), Oct. 29, 1994, 108 Stat. 4362.)

AMENDMENTS

1994—Subsec. (g)(1). Pub. L. 103-424, §3(b)(1) substituted “disclose any information from or about” for “provide information concerning”.